he did not go back to his former employers. Neither did he make any effort to seek employment in Kuala Lumpur or his home town of Pengkalan Kempas. He also stated that he could not write with his right hand and I accept that in his post-accident condition he could not do the work of a store-keeper or any work of a similar nature satisfactorily. However, there is specialist evidence that he could do some sedentary work. Taking all these factors into consideration, including the fact that the plaintiff has not mitigated his loss (see *Yoong Leok Kee Corporation Sdn. Bhd.* v. *Chin Thong Thai*[7] at 22) and that the plaintiff will be getting a lump sum now for the whole of his working life (*Murtadza bin Mohamed Hassan* v. *Chong Swee Pian*[8]), I am of the view that, based on a sum of $240 (i.e. after discounting 40% of $400) per month over 23 years' purchase (on the basis that the plaintiff's useful working life would end at 55 years), the proper award for loss of future earnings should be $38,847.09, rounded to $40,000.

Overlapping

In giving these awards, as the injuries relate to different parts and functions of the body, I am satisfied that there is no question of overlapping or duplication. Consequently, no deductions should be made.

The total awards

The total awards are as follows:

(1) Loss of actual past earnings ...	$	5,355.00
(2) Loss of partial past earnings ...		1,963.50
(3) Cost of artificial limbs and maintenance ...		11,200.00
(4) Pain and suffering and loss of amenities ...		71,000.00
(5) Loss of future earnings ...		40,000.00
(6) Agreed special damages ...		8,716.00
Total		$138,234.50

There will be judgment for the plaintiff in the sum of $138,234.50 with costs to be taxed.

The awards on items (1), (2) and (6) are with interest at 4% per annum from date of accident (i.e. October 7, 1979) to judgment. Interest should also run on item (4) from date of service of writ to judgment at 6% per annum. No interest is allowed on items (3) and (5).

Claim allowed.

Solicitors: *Murphy & Dunbar; V.P. Nathan & Co.*

AR. PL. PALANIAPPA CHETTIAR v. PL. AR. LETCHUMANAN CHETTIAR & ANOR.

[O.C.J. (Wong Kim Fatt J.C.)
November 23, 24 & December 12, 1981]
[Seremban — Civil Suit No. 226 of 1981]

Land Law — Contracts for purchase of land — Specific performance — Declaration — Injunction against Registrar of Titles — Power of court to order Registrar to enter Registrar's caveat — Prevention of fraud — Damages — Balance of convenience.

In this case, the plaintiff sued the first defendant, who was the executor of the estate of a deceased person (late father of the plaintiff) for *inter alia* a declaration that the transfer executed by the first defendant in favour of the second defendant for valuable consideration in respect of a certain piece of land in Port Dickson to be null and void and of no effect on the ground of fraud of the first defendant. After filing his writ and statement of claim, the plaintiff applied by *ex parte* summons-in-chambers for an injunction against the Registrar of Titles restraining him from registering the transfer in favour of the second defendant company which had duly completed the contract. The plaintiff also applied for an order that the Registrar (not made a party) do enter a Registrar's caveat against the title to the land in question to prevent registration of the transfer of the land in favour of the second defendant.

Held, dismissing the application: (1) an injunction does not lie against the Registrar of Titles, who has a statutory duty under the National Land Code to register the transfer properly presented before him for registration;

(2) the High Court has the power to order the Registrar to enter a Registrar's caveat to prevent fraud or improper dealings in land, whether or not the Registrar is a party to the proceedings;

(3) on the facts, the balance of convenience clearly lies in not ordering the Registrar to enter a Registrar's caveat.

Cases referred to:-

(1) *Mareva Compania Naviera S.A.* v. *International Bulkcarriers S.A.* [1975] 2 Lloyd's Rep. 509; [1980] 1 All E.R. 213.

(2) *Seet Soh Ngoh* v. *Venkateswara Sdn. Bhd. & Anor.* [1976] 1 M.L.J. 242.

(3) *Registrar of Titles, Johore, Johore Bahru* v. *Temenggong Securities Ltd.* [1976] 2 M.L.J. 44; [1976] 2 W.L.R. 951; [1977] A.C. 302.

SUMMONS-IN-CHAMBERS.

G. Vadiveloo for the plaintiff/applicant.

Atma Singh Gill for the first defendant.

Joseph Chia En Tet for the second defendant.

Cur. Adv. Vult.

Wong Kim Fatt J.C.: The application of the plaintiff made by summons-in-chambers was dismissed by me on November 24, 1981. Learned counsel for the plaintiff indicated that he had instructions to appeal against my decision in chambers to the Federal Court. I said I would give my written judgment and I do so now.

In this case, the plaintiff sues the first defendant, who is the executor of the estate of one PL. AR. Arunasalam Chettiar s/o Palaniappa Chettiar (the late father of the plaintiff) for a declaration that the transfer executed by the first defendant in favour of the second defendant in respect of the undivided ½ share of a land held under C.T. 4252 for Lots 905 and 906 ("the land"), Town and District of Port Dickson, to be null and void and of no effect. The plaintiff in his statement of claim also seeks the following reliefs: (1) specific performance of an alleged agreement between the plaintiff and the first defendant contained in the letters dated July 23, 1981, and July 29, 1981, relating to the land; (2) an injunction against the Registrar of Titles restraining him from registering the transfer of the land in favour of the second defendant; and (3) an order that the Registrar do enter a Registrar's caveat against the title to the land. In the alternative, the plaintiff claims damages for breach of contract against the defendants. Particulars of the alleged fraud by the first defendant are given in the statement of claim.

After filing the writ and statement of claim in the Registry of this Court, the plaintiff filed an *ex parte* summons-in-chambers supported by his affidavit affirmed on November 16, 1981. In view of what his counsel said that this was an urgent matter, I decided to hear the *ex parte* application early, on November 23, 1981, and it was adjourned for further hearing the following day. Just before the hearing on November 23, the writ and statement of claim were served on both the defendants. They entered appearance immediately and their counsel appeared before me in chambers to oppose counsel for the plaintiff. The summons-in-chambers therefore proceeded on an *inter partes* basis.

From the affidavit of the plaintiff and submissions of learned counsel, the following material facts are relevant to the consideration of the plaintiff's application.

It appears that by a consent order of this court dated December 23, 1980, made in Originating Summons No. 132 of 1980, the first defendant was granted leave to sell certain pieces of land, including the land in question, at stipulated reserved prices. The order to sell contained a condition that before the first defendant could sell the land to a prospective buyer, the first defendant should give the plaintiff or his solicitor 14 days' notice in writing enquiring whether or not the plaintiff would be interested to buy the land upon the same terms and conditions of the offer made by the prospective buyer, and if the plaintiff failed to buy the land within the period, the first defendant would then be at full liberty to sell the land to the prospective buyer or to another party. On July 23, 1981, the solicitors for the first defendant wrote to the plaintiff's solicitors offering the plaintiff the option to buy the land at $182,000 and warning that the offer would expire on August 6, 1981. On July 29, 1981, the plaintiff's solicitors replied by letter that the plaintiff agreed to buy the land at $185,000, ($3,000 higher than the price offered) and enclosed his cheque for $46,250, stating that "the balance of $138,750 will be paid later", which words gave rise to major differences of opinion between the two parties. By letter dated August 5, 1981, the first defendant's solicitors returned the cheque of $46,250 "because of the simple reason that the balance of $138,750 'will be paid later' and not within the said 10 days of acceptance". In reply to this letter, the plaintiff's solicitors by letter dated August 7, 1981, sent his two cheques totalling $182,000 for the purchase of the land. They also stated that the cheque for $46,250 was in excess of the deposit required and explained that the plaintiff meant to pay the balance within "the 10 day period". The plaintiff also insisted that a sale agreement should be drawn up. By letter dated August 17, 1981, the first defendant's solicitors returned the two cheques to the plaintiff's solicitors, alleging that the letter of August 7, 1981, was in fact posted at 6.30 p.m. on August 10, 1981, as evidenced by the postmark, and that the offer had not been accepted by August 6, 1981. The plaintiff alleged in his affidavit (paragraph 9) that refusal on the part of the first defendant to accept the said cheques was wrongful, fraudulent, and in breach of the terms of the consent order dated December 23, 1980. After August 6, 1981, the first defendant sold the land to the second defendant by agreement dated August 7, 1981, which had been duly completed and the transfer had thereafter been presented to the Registrar of Titles for registration (but not registered as yet on November 24, 1981, *vide* Mr. Vadiveloo's affidavit affirmed on that morning). From the proceeds of sale of the land to the second defendant, the plaintiff had received his ⅓ share of $57,588.34 which he stated in his affidavit was received without prejudice, the remaining ⅔ share being the entitlement of the first defendant. In reply to my question, counsel for the plaintiff stated that the plaintiff had not entered any private caveat against the land to protect his claim or interest.

From the above facts, I was urged by counsel for the plaintiff to issue an injunction restraining the Registrar of Titles from registering the transfer and also to order him to enter a Registrar's caveat against the title to the land to prevent registration of the transfer of the land in favour of the second defendant, Cheok Brothers Realty Sdn. Bhd.

The Injunction

Although in a proper case the court has the discretionary power under Order 29 of the Rules of the High Court, 1980, to issue an injunction for the preservation of property (see *Mareva Compania Naviera S.A.* v. *International Bulkcarriers S.A.*[1]), the question here has to be viewed differently in the light of section 29(2) of the Government Proceedings Ordinance, 1956, which reads as follows:

"29(2) The court shall not in any civil proceedings grant any injunction or make any order against an officer of the Government if the effect of granting the injunction or making the order would be to give any relief against the Government which could not have been obtained in proceedings against the Government."

In *Seet Soh Ngoh* v. *Venkateswara Sdn. Bhd. & Anor.*,[2] the plaintiff obtained an order for injunction against the developer and the Registrar of Titles. Counsel for the plaintiff conceded that in view of section 29 of the Government Proceedings Ordinance, an order for injunction could not lie against the Registrar of Titles. Accordingly, the injunction was discharged in that case by the learned judge with whom I respectfully agree.

In the present application before me, in the light of the clear provisions of section 29(2) of the Ordinance, I hold that an injunction does not lie against the Registrar of Titles, who has a statutory duty under the National Land Code, 1965 ("the Code"), to register a transfer of land properly presented in his registry for registration.

The Registrar's caveat

On the question of the entry of a Registrar's caveat, counsel for the plaintiff submitted that the High Court had the power to order the Registrar of Titles to enter his caveat and urged me to make the order accordingly for the prevention of fraud. In answer to my question, counsel said that he had seen the Registrar and his request to the Registrar to enter a Registrar's caveat was unsuccessful. Counsel for the defendants submitted that, since the Registrar was not made a party before the court, the court had no jurisdiction to order him to enter his caveat.

In considering the question, I was requested by counsel to consider the judgment of Chang Min Tat J. (as he then was) in the *Seet Soh Ngoh* case. The learned judge held in that case that the court had the power to order the Registrar, since he was before the court, to enter a Registrar's caveat to prevent the fraud and improper dealing. With respect, I am in agreement with the decision of the learned judge. I would go further to consider (whether or not the Registrar is a party to the proceedings before the court) the question whether the court has the power to order him to enter his caveat under the provisions of section 417(1) of the Code, reading as follows:

"417. (1) The court or a judge may by order direct the Registrar or any Collector to do all such things as may be necessary to give effect to any judgment or order given or made in any proceedings relating to land, and it shall be the duty of the Registrar or Collector to comply with the order forthwith."

In my judgment, the provisions of section 417(1) are clear and unambiguous. It vests the power in the High Court to direct by order the Registrar to carry out or give effect to any judgment or order given or made in any proceedings relating to land.

It is clear that under the Code the Registrar may act on his own motion or upon information or request made to him. The word "may" indicates a discretion on the part of the Registrar. He is not bound to act on such information or request in every case. Thus in the case of an entry of a Registrar's caveat, the Registrar is said to perform a quasi-judicial function in the exercise of that discretion, but the discretion must always be exercised judiciously or reasonably and in good faith, not arbitrarily nor in bad faith. By contrast, in the case of an application for the entry of a private or lien-holder's caveat, his function is purely ministerial or administrative. In other words, in the last two categories of cases, he must enter the caveats, provided the applications are in the proper forms and accompanied by the prescribed fees.

If the Registrar refuses on request by a party, as in the present case, to enter a Registrar's caveat, that party in my opinion is not without any legal remedy. The interested or aggrieved party may apply to the High Court for an order that the Registrar enter a Registrar's caveat as directed. It is of course prudent to cite the Registrar as a party. Although the Registrar has a discretion, there is nothing in the Code to prevent or restrict the exercise of the power by the High Court as it deems just. It may be noted that under the provisions of section 321(3)(c), the court (in a case where the Registrar is a party) has the power on appeal under section 418 to order the cancellation of a Registrar's caveat, as in *Registrar of Titles, Johore, Johore Bahru* v. *Temenggong Securities Ltd.*[3] The Registrar has no interest in the land in question. He is subject to the authority of the court under the provisions of sections 417 and 418 of the Code. He merely obeys the order of the court for the entry of a Registrar's caveat and must not in such a case cancel it on his own motion unless subsequently ordered to do so by a court of competent jurisdiction. Indeed, failure by the Registrar to comply with the order of court will render him liable to be punished for contempt of court. It may be observed that from the wording of section 417(1), the words "any proceedings" need not necessarily be confined to legal proceedings of a civil nature as they are wide enough to include proceedings of a criminal nature (for example involving criminal breach of trust or forgery relating to land). All these on true construction point in the direction of an unfettered discretionary power conferred on the court by the Code. I therefore hold that the High Court has the power under section 417(1) of the Code to order the Registrar to enter a Registrar's caveat under section 320 of the Code for the prevention of fraud or improper dealings, whether or not the Registrar is a party to the proceedings.

Balance of convenience

I now proceed to consider whether in my discretion I should make the order applied for by the plaintiff. The plaintiff, a citizen and resident of India and having not disclosed in his affidavit his address in Malaysia or India, had failed or neglected to enter a caveat to protect his claim to or interest in the land when he had ample time to do so. If he had a valid contract, he had not completed it, as against the second defendant who had duly completed his contract and who had also presented the transfer for registration, so that in equity the first defendant held the legal title of the land in trust for the benefit of the second defendant, who had become the beneficial owner. Further, the plaintiff had received his share of the proceeds of the sale of the land from the first defendant, notwithstanding without prejudice, while the first defendant's share of the proceeds of sale had (as disclosed by counsel for the first defendant) been remitted to India, a country strict with its foreign exchange control. The effect of the entry of a Registrar's caveat under section 319(1)(b)(i) and section 319(2) of the Code was the rejection of the transfer by the Registrar. No useful purpose would be served by recalling the transfer from the Registry of Titles, an act which would cause great inconvenience if not hardship to the defendants and which would further lead to more litigation and costs.

In the circumstances, the balance of convenience clearly lay in not ordering the Registrar to enter a Registrar's caveat against the title to the land. The application was therefore dismissed, with costs in the cause. This does not mean that the plaintiff is totally without remedy. He can recover damages against the defendants if he can prove his claims. It must also be made clear that in coming to my decision on this interlocutory application, I have not gone into the merits of the plaintiff's suit, nor am I in any way prejudging his case as pleaded in his statement of claim.

Application dismissed.

Solicitors: *Vadiveloo & Co.; Gill & Tang; Chan & Chia.*